

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

September 14, 2015

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Michael C. Burgess  
Chairman  
Subcommittee on Commerce, Manufacturing, and Trade  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Upton and Chairman Burgess:

I am writing to request that the Energy and Commerce Committee hold a hearing examining the relationship between professional sports and fantasy sports to review the legal status of fantasy sports and sports betting.

Fantasy sports allow users to create virtual teams of professional athletes selected from the league's full roster, which compete against other virtual teams.<sup>1</sup> The fantasy team's success is based on the statistical performance of the individual players over the course of a season.<sup>2</sup> Daily fantasy sports have emerged more recently, allowing users to rebuild teams and compete

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<sup>1</sup> *An Uncertain Line Between Fantasy Sports, Gambling*, Boston Globe (Aug. 2, 2015) (online at [www.bostonglobe.com/sports/2015/08/02/fantasy-games-draw-scrutiny-ban-sports-gambling-blurs/XxWUs2cwrveLvJe8bFt3wI/story.html](http://www.bostonglobe.com/sports/2015/08/02/fantasy-games-draw-scrutiny-ban-sports-gambling-blurs/XxWUs2cwrveLvJe8bFt3wI/story.html)).

<sup>2</sup> *The NFL's Hypocritical Stance on Fantasy Football and Gambling*, Vox (Aug. 25, 2015) (online at [www.vox.com/2015/8/25/9201183/fantasy-football-gambling-nfl](http://www.vox.com/2015/8/25/9201183/fantasy-football-gambling-nfl)).

daily or weekly.<sup>3</sup> Users can often compete for free, but some fantasy sports operators allow users to compete for cash prizes, which require entry fees.<sup>4</sup> An estimated 57 million people in the United States and Canada will participate in fantasy sports this year.<sup>5</sup>

The Professional and Amateur Sports Protection Act of 1992 (PASPA) prohibits sports betting nationally, except in states in which sports betting was legal prior to passage of the Act.<sup>6</sup> Online sports betting and online gambling are also prohibited under Federal law.<sup>7</sup> Under the Interstate Wire Act of 1961, interstate sports betting is prohibited through the use of “wire communications facilities,” including telephones and the Internet, except for betting transactions between states in which such activity is legal.<sup>8</sup> Online gambling of other kinds, including Internet poker, is prohibited under the Unlawful Internet Gambling Enforcement Act (UIGEA).<sup>9</sup>

In what has become known as the fantasy sports “carve-out,” the UIGEA specifically exempts fantasy sports games that meet three criteria: (1) the value of prizes are not determined by the number of participants or the amount of fees paid by participants, (2) winning outcomes must be based on skill, not chance, and (3) outcomes must not be based on the score or statistics of an individual athlete in a single event.<sup>10</sup> The interplay between these federal laws has made the legal landscape murky and public policy unclear, making them ripe for Congressional review.<sup>11</sup>

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<sup>3</sup> *Yahoo Will Enter Daily Fantasy Sports Market*, New York Times (July 8, 2015) (online at [www.nytimes.com/2015/07/09/technology/yahoo-will-enter-daily-fantasy-sports-market.html?\\_r=0](http://www.nytimes.com/2015/07/09/technology/yahoo-will-enter-daily-fantasy-sports-market.html?_r=0)).

<sup>4</sup> See note 1.

<sup>5</sup> See note 3.

<sup>6</sup> 28 U.S.C. § 3701-3704

<sup>7</sup> 31 U.S.C. § 5361-5367; 18 U.S.C. § 1084.

<sup>8</sup> 18 U.S.C. § 1084.

<sup>9</sup> 31 U.S.C. § 5362.

<sup>10</sup> *Id.*

<sup>11</sup> *The Hot New Form Of Fantasy Sports Is Probably Addictive, Potentially Illegal And Completely Unregulated*, Think Progress (May 7, 2015) (online at [thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/](http://thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/)); House Committee on Energy and Commerce, *Hearing on the State of Online Gambling*, 113th Cong. (Dec. 10, 2013). See generally House Committee on Energy and Commerce, *Hearing on Internet Gaming: Is There a Safe Bet?*, 112th Cong. (Oct. 24, 2011); House Committee on Energy and Commerce, *Hearing on Internet Gaming: Regulating in an Online World*, 112th Cong. (Nov. 17, 2011).

Historically, professional sports leagues have been strongly opposed to sports betting.<sup>12</sup> PASPA was passed with strong support of the National Football League (NFL) and the National Basketball Association (NBA).<sup>13</sup> Paul Tagliabue, who was NFL Commissioner at the time, testified before Congress asserting that the law was needed to protect the integrity of the game.<sup>14</sup> Even more recently, the NFL, NBA, Major League Baseball (MLB), and the National Hockey League (NHL), together with the National Collegiate Athletic Association (NCAA), sued the state of New Jersey to stop the state from implementing a plan to allow sports wagering at casinos and racetracks.<sup>15</sup>

At the same time, the professional sports leagues are fully embracing fantasy sports. Within the past two years, both the NBA and the MLB have each purchased ownership stakes in daily fantasy sports operators, which include exclusive sponsorship deals.<sup>16</sup> The NHL and Major League Soccer (MLS) have also invested in daily fantasy sports operators.<sup>17</sup> And even without direct investment in the fantasy sports operators, sports leagues profit from fantasy users' more active engagement with the sport. Fantasy sports participants watch more games than the average fan, increasing ratings and advertising dollars for the sports leagues.<sup>18</sup>

In addition to league investments, teams across professional sports have formed partnerships with daily fantasy sports operators. Sixteen NBA teams, and 27 of 30 MLB teams

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<sup>12</sup> See note 2.

<sup>13</sup> *Sports Gambling in U.S.: Too Prevalent to Remain Illegal?*, Washington Post (Feb. 27, 2015) (online at [www.washingtonpost.com/sports/sports-gambling-in-us-too-prevalent-to-remain-illegal/2015/02/27/f1088e4c-b7d3-11e4-9423-f3d0a1ec335c\\_story.html](http://www.washingtonpost.com/sports/sports-gambling-in-us-too-prevalent-to-remain-illegal/2015/02/27/f1088e4c-b7d3-11e4-9423-f3d0a1ec335c_story.html)).

<sup>14</sup> *Id.*

<sup>15</sup> *What's Next in N.J.'s Sports Betting Bid After Court Rejects Plan?*, NJ.com (Aug. 27, 2015) (online at [www.nj.com/politics/index.ssf/2015/08/whats\\_next\\_in\\_njs\\_sports\\_betting\\_bid\\_after\\_court\\_r.html](http://www.nj.com/politics/index.ssf/2015/08/whats_next_in_njs_sports_betting_bid_after_court_r.html)).

<sup>16</sup> See note 1; *NBA Signs Four-Year Deal With FanDuel That Includes Equity Stake In Fantasy Company*, Sports Business Daily (Nov. 12, 2014) (online at [www.sportsbusinessdaily.com/Daily/Issues/2014/11/12/Marketing-and-Sponsorship/NBA-FanDuel.aspx](http://www.sportsbusinessdaily.com/Daily/Issues/2014/11/12/Marketing-and-Sponsorship/NBA-FanDuel.aspx)); *DraftKings and Major League Baseball Extend Exclusive Partnership*, Forbes (Apr. 2, 2015) (online at [www.forbes.com/sites/darrenheitner/2015/04/02/draftkings-and-major-league-baseball-extend-exclusive-partnership/](http://www.forbes.com/sites/darrenheitner/2015/04/02/draftkings-and-major-league-baseball-extend-exclusive-partnership/)).

<sup>17</sup> *The Side of Gronk You Don't See: One-on-One with the Party-Hardy Patriots Star*, Esquire (Aug. 17, 2015) (online at [www.esquire.com/sports/a37211/rob-gronkowski-interview-draftkings-shoot/](http://www.esquire.com/sports/a37211/rob-gronkowski-interview-draftkings-shoot/)).

<sup>18</sup> See note 2.

are sponsored by daily fantasy sports operators.<sup>19</sup> Although the NFL has not formally partnered with any daily fantasy sports operators, 21 NFL teams have formalized sponsorship deals with daily fantasy sports operators.<sup>20</sup> At least some of those deals include equity investments by the teams into the fantasy sports operators.<sup>21</sup> Moreover, a number of professional sports players have sponsorship arrangements with the operators.<sup>22</sup>

Team involvement in daily fantasy sports also raises questions of whether players or league personnel, who may be able to affect the outcome of a game, should be allowed to participate in daily fantasy sports. Many NFL players are known to participate in fantasy sports.<sup>23</sup> In 2009, before the rise of daily fantasy sports, the NFL itself highlighted the fact that many of its players participate in fantasy football leagues.<sup>24</sup> The NBA and its players' union disagree as to whether players are prohibited from participating.<sup>25</sup> The MLB, however, prohibits players from participating in fantasy sports.<sup>26</sup> The NHL has a similar ban on direct player participation.<sup>27</sup>

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<sup>19</sup> *Rams Sign Sponsorship Deal with FanDuel*, St. Louis Business Journal (Mar. 25, 2015) (online at [www.bizjournals.com/stlouis/blog/2015/03/rams-sign-sponsorship-deal-with-fanduel.html](http://www.bizjournals.com/stlouis/blog/2015/03/rams-sign-sponsorship-deal-with-fanduel.html)); *Blurry Line Between Fantasy Sites & Sports Gambling*, Philly.com (Aug. 27, 2015) (online at [www.philly.com/philly/sports/eagles/20150826\\_Blurry\\_line\\_between\\_fantasy\\_sites\\_\\_sports\\_gambling.html](http://www.philly.com/philly/sports/eagles/20150826_Blurry_line_between_fantasy_sites__sports_gambling.html)).

<sup>20</sup> *One-Day Fantasy Sports Partnership / Sponsorship Tracker*, Legal Sports Report (online at [www.legalsportsreport.com/dfs-sponsorship-tracker/](http://www.legalsportsreport.com/dfs-sponsorship-tracker/)) (accessed Sept. 3, 2015).

<sup>21</sup> See note 1.

<sup>22</sup> *Do Athlete Endorsements Still Matter in Daily Fantasy Sports?*, Forbes (Dec. 4, 2014) (online at [www.forbes.com/sites/marcedelman/2014/12/04/do-athlete-endorsements-still-matter-in-daily-fantasy-sports/](http://www.forbes.com/sites/marcedelman/2014/12/04/do-athlete-endorsements-still-matter-in-daily-fantasy-sports/)).

<sup>23</sup> *Daily Fantasy Sports Growth Pushes Leagues to Regulate Players*, Bloomberg (Apr. 1, 2015) (online at [www.bloomberg.com/news/articles/2015-04-01/daily-fantasy-sports-growth-pushes-leagues-to-regulate-players](http://www.bloomberg.com/news/articles/2015-04-01/daily-fantasy-sports-growth-pushes-leagues-to-regulate-players)).

<sup>24</sup> National Football League, *Fantasy Football Isn't Just for Fans—NFL Players Are Hooked, Too* (Nov. 20, 2009) (online at [www.nfl.com/news/story/09000d5d8145ad3d/article/fantasy-football-isnt-just-for-fans-nfl-players-are-hooked-too](http://www.nfl.com/news/story/09000d5d8145ad3d/article/fantasy-football-isnt-just-for-fans-nfl-players-are-hooked-too)).

<sup>25</sup> See note 24.

<sup>26</sup> *Id.*

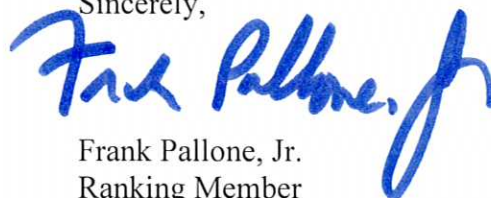
<sup>27</sup> *MLB, NBA, and NHL Players Cannot Play Daily Fantasy; NFL Takes Position It's Not an Issue*, USA Today (Apr. 10, 2015) (online at [thebiglead.com/2015/04/10/mlb-nba-and-nhl-players-cannot-play-daily-fantasy-nfl-takes-position-its-not-an-issue/](http://thebiglead.com/2015/04/10/mlb-nba-and-nhl-players-cannot-play-daily-fantasy-nfl-takes-position-its-not-an-issue/)).

Professional sports deep involvement with daily fantasy sports leaves many questioning whether fantasy sports are distinguishable from sports betting and other forms of gambling.<sup>28</sup> NBC News Political Director Chuck Todd recently questioned the blurring of these lines in a tweet, asking “Now that the NFL and MLB [are] condoning daily fantasy, isn't it fair to say leagues are now embracing gambling?”<sup>29</sup>

At the same time, some of the leagues’ representatives have recently noted a reversal of the historic opposition to sports betting. In a November 2014 op-ed in the *New York Times* in support of legal sports betting, NBA Commissioner Adam Silver wrote that “sports betting should be brought out of the underground and into the sunlight where it can be appropriately monitored and regulated.”<sup>30</sup> Similarly, earlier this year, MLB Commissioner Rob Manfred told ESPN that the league should give “fresh consideration” to legalizing sports betting.<sup>31</sup>

Given the professional sports leagues professional players deep involvement with fantasy sports, this Committee, as the Committee with jurisdiction over professional sports and gambling, should examine the relationship between fantasy sports and gambling and the relationships between professional sports leagues, teams, and players and fantasy sports operators.

Sincerely,



Frank Pallone, Jr.  
Ranking Member

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<sup>28</sup> See notes 1 and 2. *ESPN Brings Betting Talk to the Mainstream*, NPR (June 26, 2015) (online at [www.npr.org/2015/06/26/417101885/espn-brings-betting-talk-to-the-mainstream](http://www.npr.org/2015/06/26/417101885/espn-brings-betting-talk-to-the-mainstream)); *The Hot New Form of Fantasy Sports Is Probably Addictive, Potentially Illegal and Completely Unregulated*, Think Progress (May 7, 2015) (online at [thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/](http://thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/)).

<sup>29</sup> Chuck Todd (@chucktodd), Twitter (Aug. 30, 2015, 5:09 PM) (online at [twitter.com/chucktodd/status/638096152982867968?refsrc=email&s=11](https://twitter.com/chucktodd/status/638096152982867968?refsrc=email&s=11)).

<sup>30</sup> Adam Silver, *Legalize and Regulate Sports Betting*, *New York Times* (Nov. 13, 2014) (online at [www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html](http://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html)).

<sup>31</sup> *MLB to Talk Betting with Owners*, ESPN (Feb. 5, 2015) (online at [espn.go.com/chalk/story/\\_/id/12286521/mlb-commissioner-rob-manfred-says-legalized-sports-betting-needs-fresh-consideration](http://espn.go.com/chalk/story/_/id/12286521/mlb-commissioner-rob-manfred-says-legalized-sports-betting-needs-fresh-consideration)).